



COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
NORTHEAST REGIONAL OFFICE

205B Lowell Street, Wilmington, MA 01887 • (978) 694-3200

DEVAL L. PATRICK  
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CERTIFIED MAIL

January 12, 2007

Richard A. Nylén, Esq.  
Lynch DeSimone & Nylén, LLP  
12 Post Office Square  
Boston, Massachusetts 02109

Re: NEWBURYPORT - Solid Wastes/COR  
Crow Lane Landfill  
Force Majeure – Geo-Composite and FML  
Approval  
FMF No. 39545

Dear Attorney Nylén:

We are in receipt of New Ventures Associates, LLC's ("New Ventures") December 22, 2006 and January 5, 2007 submissions to the Massachusetts Department of Environmental Protection, Northeast Regional Office, Bureau of Waste Prevention, Solid Waste Management Section ("MassDEP") and the Office of the Attorney General informing MassDEP that New Ventures experienced a delay complying with the requirements of paragraph 1 (r)(ii) of the Preliminary Injunction entered on October 20, 2006 in *Commonwealth of Massachusetts v. New Ventures Associates, LLC*, Suffolk Superior Court, Civil Action No. 06-0790 C (the "Order"). New Ventures' submissions indicated that the delay was due to the fact that, on or about December 18, 2006, New England Liner Services, Inc. ("New Englander Liner"), the vendor with whom New Ventures had contracted to complete installation of the Geo-Composite Gas Vent System ("Geo-Composite") and Flexible Membrane Liner ("FML") at the Crow Lane Landfill, breached the contract with New Ventures and abandoned the Crow Lane project in favor of a project for a client in Rhode Island.

As you know, paragraph 1(r)(ii) of the Order requires that New Ventures complete installation of the Geo-Composite and FML within seventy-five (75) days of the Order, or by January 3, 2006.



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Your January 5, 2007 submission states that New Ventures had retained Chenango Contracting, Inc. of Johnson City, New York ("Chenango") to complete the installation of the Geo-Composite and FML within the Phase I and II Areas at the landfill and that Chenango has been on-site since January 2, 2006. In addition, your submission states that the Phase I Area has been anchored and completed and that the Phase II Area has been prepared for installation of the Geo-Composite and FML and that the installation of the Geo-Composite and FML in the Phase II Area should be completed by the "end of next week" (January 12, 2007).

Based on MassDEP records Chenango resumed installation of the Geo-Composite and FML on December 27, 2006. Chenango has, with the exception of December 30, 2006 through January 2, 2007, been at the landfill daily installing the Geo-Composite and FML, including last weekend (January 6 and 7, 2007). However, the installation of the FML by Chenango has been slowed due to the occurrence of constant high winds.

On January 4<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, and 11<sup>th</sup> MassDEP personnel visited the landfill to observe the status of the installation of the Geo-Composite and FML. MassDEP and the Office of the Attorney General acknowledge that New Ventures, in addition to the January 5, 2007 written submittal, provided notice via email to MassDEP regarding the delay in compliance with the tarp placement requirements of paragraph 1(r)(ii) because of New England Liner's abandonment of the project. In addition, MassDEP and the Office of the Attorney General recognize that the occurrence of exceptionally high winds has slowed the installation of the Geo-Composite and FML by Chenango.

MassDEP and the Office of the Attorney General have reviewed New Ventures' request that the deadline for a return to compliance with the Geo-Composite and FML installation requirements of paragraph 1 (r)(ii) of the Order be subject to the Force Majeure provisions of paragraphs 16 through 18 of the Order. MassDEP and the Office of the Attorney General have determined that the abandonment of the project by New England Liner and the occurrence of extreme wind conditions were Force Majeure events and have extended by ten (10) days from the date of this letter New Ventures deadline to return to compliance with the requirements of paragraph 1 (r)(ii).

If you have any questions please contact me at (978) 694-3299.

Sincerely,

**This final document copy is being provided to you electronically by the  
Massachusetts Department of Environmental Protection.  
A signed copy of this document  
is on file at the DEP office listed on the letterhead.**

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John A. Carrigan, Chief  
Solid Waste Management Section

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JAC/jac

Cc: Jack Morris  
City of Newburyport  
Health Department  
City Hall  
60 Pleasant Street  
Newburyport, MA 01950  
Email Address: JMorris@CityofNewburyport.com

Matthew Ireland  
Office of the Attorney General  
Boston, MA

Traci Peters  
City of Newburyport  
Conservation Commission  
60 Pleasant Street  
Newburyport, MA 01950  
Email Address: tpeter@cityofNewburyport.com

William Thibeault, President  
New Ventures LLC  
85-87 Boston Street  
Everett, Massachusetts 02149  
Email Address: omlcllc@aol.com

Michael Quatromoni  
SITEC Environmental, Inc.  
769 Plain Street, Unit C  
Marshfield, MA 02050

Senator Steven A. Baddour  
State House  
Boston, Massachusetts  
Email Address: SBaddour@senate.state.ma.us

Representative Michael A. Costello  
State House  
Boston, Massachusetts  
Email Address: Rep.MichaelCostello@hou.state.ma.us

This is an electronic facsimile of a document on file with the Massachusetts Department of Environmental Protection.

Tom and Terry Berns  
Newburyport, Massachusetts  
Email Address: [tjbti@comcast.net](mailto:tjbti@comcast.net)

This is an electronic facsimile of a document on file with the Massachusetts Department of Environmental Protection.

Jack Van Loan  
Plum Island  
Newburyport, Massachusetts  
Email Address: [jackvanloan@earthlink.net](mailto:jackvanloan@earthlink.net)

Ronald Klodenski  
Newburyport, Massachusetts  
Email Address: [ronklod@verizon.net](mailto:ronklod@verizon.net)

William Woodbury  
Newburyport, Massachusetts  
Email Address: [william.woodbury@verizon.net](mailto:william.woodbury@verizon.net)

Bruce Vogel  
City of Newburyport  
City Council  
Email Address: [wardfive@comcast.net](mailto:wardfive@comcast.net)

Michael Dingle  
MassDEP/OGC-Boston